IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Prakash Dave v. State of Rajasthan

S.B.CIVIL WRIT PETITION NO.1894/1999
under Article 226 of the Constitution of India.

Date of Order : 17th August, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Himanshu Shrimali, for the petitioner.
Mr. L.R.Upadhyay, Dy.Govt.Advocate.

BY THE COURT :

By an advertisement dated 24.4.1999 the Director, Department of Ayurved, Government of Rajasthan, Ajmer invited applications from desirous eligible candidates for the purpose of appointment to the post of Ayurved Chikitsak purely on temporary basis for a period of four months. In clause (2) of the said advertisement the maximum age limit for appointment as Ayurved Chikitsak was provided as 35 years.

The petitioner in pursuant to the advertisement dated 24.4.1999 considering himself

eligible to be appointed as Ayurved Chikitsak submitted an application in prescribed proforma on 22.5.1999. The date of birth of the petitioner is 14.1.1963, therefore, at the time of submitting application for considering his candidature for appointment as Ayurved Chikitsak under the advertisement dated 24.4.1999 he was over age. The petitioner apprehending cancellation of his application form preferred the present writ petition before this Court seeking a direction for respondents to consider the candidature of the petitioner for the post of Ayurved Chikitsak irrespective of the fact that he was not within the age limit prescribed under the advertisement dated 24.4.1999.

His Excellency the Governor of Rajasthan exercising powers under proviso to Article 309 of the Constitution of India framed Rajasthan Ayurvedic, Unani, Homeopathic and Naturopathic Service Rules, 1973 (hereinafter referred to as “the Rules of 1973”) to regulate the service conditions and recruitment to the post in Rajasthan Ayurvedic, Unani, Homeopathic and Naturopathic Service. Rule 9 of the Rules of 1973 provides that a candidate for direct recruitment to the post enumerated in schedule must have attained the age of 20 years and must not have attained the age of 35 years in the case of Junior Posts and 40 years in the case of Senior Posts on the first day of January next following the last date fixed for receipt of

applications. The maximum age limit of 35 years in the advertisement dated 24.4.1999 was fixed in view of provisions of Rule 9 of the Rules of 1973.

The contention of the counsel for the petitioner is that the prescription of 35 years as maximum age limit for appointment in Rajasthan Ayurvedic, Unani and Naturopathic service is a discriminatory as the maximum age limit prescribed under Rule 10 of the Rajasthan Medical and Health Service Rules, 1963 (hereinafter referred to as "the Rules of 1963") regulating the recruitment to posts in and the conditions of service of persons appointed to Rajasthan Medical and Health Service is 45 years. According to the counsel for the petitioner the person employed under the Rules of 1973 and under the Rules of 1963 both possess equivalent qualification and in both services the persons employed are required to discharge the duty of treatment of patients. The posts of Civil Assistant Surgeons under the Rules of 1963 and the post of Ayurved Chikitsak under the Rules of 1973 are equivalent posts having same pay scales and both are required to be filled in 100% by way of direct recruitment, therefore, no discrimination can be made while determining different maximum age limits for appointment on the post of Ayurved Chikitsak and Civil Assistant Surgeon, accordingly it is contended that Rule 9 of the Rules of 1973 is discriminatory and the maximum age limit for appointment of Ayurved

Chikitsak should also be 45 years as provided under Rule 10 of the Rules of 1963. To substantiate the contention the petitioner has placed reliance upon a Division Bench judgment of this Court in the case of Narayan Singh v. State of Rajasthan & Anr., reported in 1990(1) WLN 370.

Heard counsel for the parties.

The appointment to the post of Ayurved Chikitsak is regulated under the Rules of 1973 and appointment to the post of Civil Assistant Surgeon is regulated under the Rules of 1963. Both the posts are part of different services. The legislature in its wisdom considered appropriate to fix 35 years as maximum age limit for appointment to the post of Ayurved Chikitsak under the Rules of 1973 and 45 years for appointment as Civil Assistant Surgeon under the Rules of 1963. The fixation of maximum age limit depends on various factors, such as the requirement of persons on the post, nature of duties, need of persons on the post concerned, requisite hours of their availability and so many other factors. These all factors are relevant while determining age limit for recruitment. The petitioner in the present case failed to lay down any foundation to illustrate discrimination which can be termed as irrational while fixing the maximum age limit for appointment of Ayurved Chikitsak and Civil Assistant Surgeons under

the Rules of 1973 and 1963 respectively. The Division Bench judgment of this Court in the case of Narayan Singh (supra) is having no application in the present case. In the case of Narayan Singh (supra) in Rajasthan Forest Subordinate Service Rules, 1963 maximum age limit for appointment to the post of Forest Guard was provided as 28 years and for other posts the maximum age limit given was 31 years. The Division Bench of this Court held that two age limits cannot be prescribed for recruitment in the same service.

In the present case the petitioner has sought comparison with the maximum age limit prescribed under a separate set of Rules and for that too there is no foundation for illustrating discrimination. The petitioner, therefore, is utterly failed to make out any case of discrimination in fixing the age limit of 35 years for appointment on the post of Ayurved Chikitsak.

In view of it, I do not find any force in the petition. The same, therefore, deserves to be dismissed. The writ petition, therefore, stands dismissed.

(GOVIND MATHUR),J.

kkm/ps.